

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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 EXAMINER

ROMEO, D

ART UNIT	PAPER NUMBER
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1647

22

DATE MAILED:

08/29/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**



## UNITED STATES DEPARTMENT OF COMMERCE

## Patent and Trademark Office

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Washington, D.C. 20231

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

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## Commissioner of Patents and Trademarks

1. The restriction requirement mailed 04/09/01 (Paper No. 19) is withdrawn upon further consideration.
2. Applicants' response filed 06/13/01 (Paper No. 21) to the restriction requirement mailed 04/09/01 (Paper No. 19) is moot in view of withdrawal of the restriction requirement.
3. The amendment filed on May 14, 2000 (Paper No. 12) amending all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because newly submitted claims 1-28, 30, 31, 36-41 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Newly submitted claims 1-28, 30, 31, 36-41 and the invention originally claimed are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the invention originally claimed, directed to a targeting molecule linked to a biological agent wherein the biological agent is the antibiotic gentamicin, is not disclosed as capable of use together with a targeting molecule linked to a biological agent wherein the biological agent is the antibiotic gentamicin wherein the targeting molecule is further linked to a peptide sequence that directs delivery of the biological agent to a carcinoma cell, a nucleus or an endoplasmic reticulum. Moreover, a targeting molecule that delivers gentamicin has different modes of operation, different functions, or different effects than a targeting molecule that delivers a biological agent, wherein the targeting molecule is further linked to a peptide sequence that directs delivery of the biological agent to a carcinoma cell, a nucleus or an endoplasmic reticulum. Furthermore, the invention originally claimed and newly submitted claims 1-28, 30, 31, 36-41 are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it is not disclosed as capable of use together with a targeting molecule linked to a biological agent wherein the biological agent is the antibiotic gentamicin wherein the targeting molecule is further linked to a peptide sequence that directs delivery of the biological agent to a carcinoma cell, a nucleus or an endoplasmic reticulum. The subcombination has separate utility such as chemotherapy of cancer.
4. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, newly submitted claims 1-28, 30, 31, 36-41 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.
5. Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD OF ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

ANY INQUIRY CONCERNING THIS COMMUNICATION OR EARLIER COMMUNICATIONS FROM THE EXAMINER SHOULD BE DIRECTED TO DAVID S. ROMEO WHOSE TELEPHONE NUMBER IS (703) 305-4050. THE

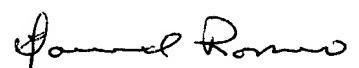
EXAMINER CAN NORMALLY BE REACHED ON MONDAY THROUGH FRIDAY FROM 7:30 A.M. TO 4:00 P.M.

IF ATTEMPTS TO REACH THE EXAMINER BY TELEPHONE ARE UNSUCCESSFUL, THE EXAMINER'S SUPERVISOR, GARY KUNZ, CAN BE REACHED ON (703) 308-4623.

OFFICIAL PAPERS FILED BY FAX SHOULD BE DIRECTED TO (703) 308-4242.

FAXED DRAFT OR INFORMAL COMMUNICATIONS SHOULD BE DIRECTED TO THE EXAMINER AT (703) 308-0294.

ANY INQUIRY OF A GENERAL NATURE OR RELATING TO THE STATUS OF THIS APPLICATION OR PROCEEDING SHOULD BE DIRECTED TO THE GROUP RECEPTIONIST WHOSE TELEPHONE NUMBER IS (703) 308-0196.



David S Romeo  
Primary Examiner  
Art Unit: 1647